IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 186 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

DHORAJIA CONSTRUCTION COMPANY

Appearance:

1. INCOME TAX REFERENCE No. 186 of 1993

MR AKIL KURESHI with MR MANISH R BHATT for Petitioner

NOTICE SERVED for Respondent

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 18/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue,

the following question is referred for the opinion of this Court in respect of assessment year 1982-83 :-

"Whether the Appellate Tribunal is right in law and on facts in allowing the claim of the assessee under section 80HH and 80I of the Income-tax Act ?"

2. We have heard Mr Akil Kureshi, learned counsel for the revenue. Though served, none appears for the respondent-assessee.

3. The learned counsel for the revenue submits that since the respondent assessee-firm was engaged in the business of construction, it cannot be said to be carrying on any industrial or manufacturing activity. The learned counsel heavily relies on the decision of the Apex Court in CIT vs. N.C. Budharaja and Co., 204 ITR 412.

4. Having heard the learned counsel for the revenue and having gone through the aforesaid decision of the Apex Court, we find considerable substance in the submission made by the learned counsel for the revenue. We hold that the Tribunal was not right in allowing the claim of the assess under Sections 80HH and 80I of the Income-tax Act, 1961. We accordingly answer the question in the negative i.e. in favour of the revenue and against the assessee.

The reference accordingly stands disposed of with no order as to costs.

(M.S. Shah, J.)

(D.A. Mehta, J.)

sundar/-